

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLINTRON TECHNOLOGIES USA
LLC,

Plaintiff,

v.

JOSEPH PHILLIPS, RICHARD
PELLY, THOMAS MATHEW, GREG
MCKERVEY, and DESIREE
MICHELLE GRAY,

Defendants.

CASE NO. 2:24-cv-00093

ORDER ON DISCOVERY
MOTIONS (DKT. NOS. 94, 109)

JOSEPH PHILLIPS,

Counterclaim Plaintiff,

v.

PLINTRON TECHNOLOGIES USA
LLC, et al.

Counterclaim Defendants.

INTRODUCTION

The matter comes before the Court on Plaintiff/Counterclaim Defendant Plintron Technologies USA LLC's Motion to Compel Compliance with Subpoenas, (Dkt. No. 94), and Motion to Compel Discovery Against Defendant Joseph Phillips, (Dkt. No. 109). Having reviewed the Motions, the oppositions (Dkt. Nos. 126, 130), the replies (Dkt. Nos. 143, 144), and all other supporting materials, the Court GRANTS IN PART and DENIES IN PART both Motions.

ANALYSIS

A. Motion to Compel KonnectOne and MVNO Connect

The first Motion involves subpoenas served by Plintron on two non-parties KonnectOne LLC and MVNO Connect LLC's (together, the "Entities"). Plintron served the Entities with the subpoenas at issue on November 20, 2024; the Entities provided responses and objections on December 18, 2024. (Declaration of Michael Songer (Dkt. No. 95) ¶¶ 6, 8.) Plintron now moves to compel the Entities' further compliance with those subpoenas. (Dkt. No. 94.)

1. Relevant Timeframe

Plintron and the Entities first dispute the relevant timeframe that should be applied to the requests and topics. Plintron argues that timeframe should run starting from "six months before Mr. Phillips created MVNO Connect and KonnectOne (February 18, 2017 to present date and December 20, 2015 to present date, respectively)." (Mot. at 7.) The Entities disagree on the basis that the timeframe should be substantially limited as follows: (1) responses or topics from KonnectOne should be limited to an August 30, 2017, business agreement; and (2) any responses or topics from MVNO Connect only include those from "January 1, 2023 onwards" (i.e., the alleged period during which Plintron and MVNO Connect competed for business). (Opp. at 8.)

1 This dispute “impacts the time frame for all requests and topics identified in Plintron USA’s
2 subpoenas.” (Mot. at 7 n.3.)

3 On balance, the Court agrees with Plintron. “[T]he scope of discovery through a [Rule
4 45] subpoena is the same as that applicable to Rule 34 and the other discovery rules.” Fed. R.
5 Civ. P. 45(d)(1) (advisory committee’s note to 1970 amendment). However, the Court does not
6 find it appropriate to require the Entities to respond to topics or requests to the extent that they
7 seek information from before the Entities existed (i.e., were formally established as
8 corporations.) Accordingly, the Motion is GRANTED IN PART as to the relevant timeframe.
9 The relevant timeframe applied to the topics and requests runs from when the Entities were
10 formally established as corporations through the present.

11 2. Undue Burden

12 The Entities next argue that Plintron failed to take “reasonable steps to avoid imposing
13 undue burden” when issuing the subpoenas as required by Federal Rule of Civil Procedure 45.
14 (Opp. at 3 (quoting Fed. R. Civ. P. 45(d)(1).) The Court agrees. Under Rule 26, “[p]arties may
15 obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or
16 defense . . .” Fed. R. Civ. P. 26(b)(1). Information is relevant if it is “reasonably calculated to
17 lead to the discovery of admissible evidence.” Surfvivor Media, Inc. v. Survivors Prods., 406
18 F.3d 625, 635 (9th Cir. 2005) (internal citation omitted). “The test for relevance, in the context of
19 a Rule 45 subpoena to a non-party, is no different than the test under Rules 26 and 34.” Wells
20 Fargo Bank NA v. Wyo Tech Inv. Grp. LLC, 385 F. Supp. 3d 863, 873 (D. Ariz. 2019)
21 (collecting authorities); see also Specht v. Nw. Helicopters LLC, No. 3:21-CV-05730-JHC, 2022
22 WL 16961376, at *1 (W.D. Wash. Nov. 16, 2022). However, Rule 45 requires that the party
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24

1 responsible for issuing and serving a subpoena “take reasonable steps to avoid imposing undue
2 burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1).

3 Both Rule 26 and Rule 45 allow a court to limit discovery to protect a party from undue
4 burden. See Fed. R. Civ. P. 26(c)(1) (the court may limit discovery to protect a party from
5 annoyance, embarrassment, oppression, or undue burden); Fed. R. Civ. P. 45(d)(3)(A) (the court
6 may modify or quash a subpoena to a third-party that presents an undue burden.) In assessing
7 undue burden, courts in this district balance the relevance of the information and the need of the
8 requesting party against whether production of that information would be burdensome. See
9 Rollins v. Traylor Bros., No. C-14-1414, 2017 WL 1756576, at *1 (W.D. Wash. May 5, 2017);
10 United States Fire Ins. Co. v. Icicle Seafoods, Inc., No. C20-401 RSM, 2021 WL 3602523, at *4
11 (W.D. Wash. Aug. 13, 2021) (citing Amini Innovation Corp. v. McFerran Home Furnishings,
12 Inc., 300 F.R.D. 406, 409–10 (C.D. Cal. 2014)). “Courts are particularly reluctant to require a
13 non-party to provide discovery that can be produced by a party.” Icicle Seafoods, 2021 WL
14 3602523, at *4 (citation omitted).

15 Plintron argues should not be required to take the “reasonable steps” required by Rule 45
16 because the Entities are “both operated and controlled by” the Defendants. (Mot. at 6.) Not so.
17 Despite Plintron’s claims that the Entities “are not neutral third parties in this matter,” neither
18 MVNO Connect nor KonnectOne have been named as defendants in the lawsuit. Plintron alleges
19 that “[b]oth companies are intimately tied to the five individual defendants in this case,” but does
20 not demonstrate why such an intimate connection overrides the requirements enumerated in Rule
21 45. (Mot. at 2.) The two cases cited by Plintron in support of this argument, Liion v. Vertiv
22 Group Corp., No. 1:19-cv-666-RP, 2019 U.S. Dist. LEXIS 241658, and Vetstem Biopharma, Inc.
23 v. California STEM Cell Treatment Ctr., Inc., No. 2:19-cv-04728-AB-FFM, 2023 U.S. Dist.

LEXIS 55911 (C.D. Cal. Jan. 25, 2023), are distinguishable on the basis that those cases involved subpoenas issued to corporate affiliates of the named party companies. Here, the named Defendants are all individuals who, despite alleged connection to the Entities, are not the Entities' corporate parents. Accordingly, the Court finds that the guidelines presented by Rule 45 apply to the subpoenas. Plintron must take reasonable steps to ensure that the subpoenas avoid undue burden and expense on the Entities.

3. Topics and requests

Having found that Rule 45 applies here, the Court also finds that the requests and topics at issue would likely impose undue burden and expense upon the non-party Entities. On that basis, the Court is inclined to deny Plintron's motion. However, the Court recognizes that the Entities offered amendments to their objections and extended proposed compromises in an effort to comply with the subpoenas without the Court's intervention. (Mot. at 3–4; Declaration of Matthew Diggs (Dkt. No. 127), Ex. G.) Plintron did not substantively acknowledge those proposed compromises prior to filing its motion. (*Id.*) The Court finds that the compromises strike a balance between allowing Plintron access to information which it needs to make its case against the Defendants, while affording the Entities the protections warranted by Rule 45. Therefore, the Court GRANTS IN PART and DENIES IN PART Plintron's motion as to the below categories of discovery.

a. **Topics and Requests Regarding Plintron USA's Customers (MVNO Connect and KonnectOne Topics 6-9, 11; KonnectOne and MVNO Connect RFPs 3, 5, 6-12; KonnectOne RFPs 15, 17, 20; MVNO Connect RFPs 16, 18, 21)**

The Motion is GRANTED IN PART as to these topics and requests. The Entities must conduct a reasonable search for and produce all responsive and non-privileged contracts and communications between MVNO Connect and TruConnect, Assist, Patriot, RedPocket, and

1 Megatel (i.e., the five customers whom Plintron identified as having been misappropriated by
 2 Defendants.) (Diggs Decl., Ex. G at 295.) As per the discussion above, the relevant timeframe
 3 for these contracts and communications is between when MVNO Connect was formally
 4 established through the present.

5 b. **Topics and Requests Regarding T-Mobile and Entities Within the**
 6 **Telecommunications Industry (MVNO Connect and KonnectOne**
 Topics: 6-9; MVNO Connect RFPs 3-13, 16-23; KonnectOne RFPs 15-
 21)

7 The Motion is GRANTED IN PART as to these topics and requests. The Entities must
 8 conduct a reasonable search for and produce all non-privileged responsive documents and
 9 communications discussing Plintron USA with Dan Thygesen, Michael Porter, Jim Alfonsin and
 10 John Galloway (i.e., the named T-Mobile employees.) (Diggs Decl., Ex. F. at 284.) As per the
 11 discussion above, the relevant timeframe for these contracts and communications is between
 12 when the Entities were formally established through the present.

13 c. **Topics and Requests Regarding Cory Van Arsdale (MVNO Connect**
 14 **and KonnectOne Topic 6, 7, 9, 11, 15; MVNO Connect and**
 KonnectOne RFPs: 5-11)

15 The Motion is GRANTED IN PART as to these topics and requests. The Entities must
 16 conduct a reasonable search for and produce all responsive and non-privileged documents and
 17 communications relevant to their relationship and dealings with Mr. Van Arsdale. To the extent
 18 that those documents and communications are withheld as attorney work-product or privileged
 19 legal advice, the Entities must produce a comprehensive and accurate privilege log which
 20 identifies the document and indicates the basis for privilege.

21 d. **Topics and Requests Regarding Employees (Topics 2, 4, 15, 16;**
 MVNO Connect RFPs 14, 27; KonnectOne RFPs 13, 25, 26)

22 The Motion is GRANTED IN PART as to these topics and requests. The Entities must
 23 conduct a reasonable search for and produce all responsive and non-privileged documents
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sufficient to identify which, if any, employees of Plintron USA were simultaneously employed by the Entities during the relevant period (i.e., any time after the Entities were formally established.)

e. **Topics and Requests Regarding Giesecke+Devrient Mobile Security Americas (MVNO Connect and KonnectOne Topics 6-7, 9-11; MVNO Connect and KonnectOne RFPs 5-11, 13)**

The Motion is GRANTED IN PART as to these topics and requests. The Entities must conduct a reasonable search for and produce all responsive and non-privileged documents and communications with the Named Defendants regarding MVNA services provided to TruConnect, Assist, Patriot, RedPocket, and Megatel (i.e., the five customers whom Plintron identified as having been misappropriated by Defendants.) As per the discussion above, the relevant timeframe for these contracts and communications is between when the Entities were formally established through the present.

f. **Topics and Requests Regarding Financial Information (MVNO Connect and KonnectOne Topics 12-14; MVNO Connect RFPs 24-26; KonnectOne RFPs 1, 22-24)**

The Motion is GRANTED IN PART as to these topics and requests. The Entities must conduct a reasonable search for and produce all responsive and non-privileged documents related to the payroll taxes paid to their employees over the relevant period (i.e., any time after the Entities were formally established.)

g. **Topics and Requests Regarding the Intermingling of Plintron USA's Resources with Phillips Holdings Companies and Misuse of Plintron USA's Proprietary Information (MVNO Connect and KonnectOne Topics 17-19; MVNO Connect and KonnectOne RFP 4; MVNO Connect RFP 29; KonnectOne RFP 27)**

The Motion is GRANTED IN PART as to these topics and requests. The Entities must conduct a reasonable search for and produce all responsive and non-privileged documents and communications related to any accounts, including, but not limited to, Amazon Web Services

1 accounts, email services accounts, and Paychex accounts, which they share or shared with
2 Plintron USA. As per the discussion above, the relevant timeframe for these contracts and
3 communications is between when the Entities were formally established through the present.

4 * * *

5 **B. Motion to Compel Phillips**

6 Plintron’s second Motion involves a pair of discovery requests served on
7 Defendant/Counterclaim Plaintiff Joseph Phillips. Plintron served Phillips with the first set of
8 requests on August 28, 2024, and the second set on December 13, 2024. (Declaration of Michael
9 Songer (Dkt. No. 110) ¶¶ 4, 8.) Phillips provided responses and objections to the first requests on
10 October 11, 2024, and then provided limited responses and documents to the second requests
11 throughout December 2024 and January 2025. (*Id.* ¶¶ 5, 12–16.) Plintron seeks an order
12 compelling Phillips’ supplemental responses and document productions. (Dkt. No. 109.)

13 1. **Relationship with Phillips Holdings (Interrogatory Nos. 1-3, 5, 7; Request**
14 **Nos. 1-5, 7-12)**

15 Plintron first seeks an order compelling Phillips to “provide discovery related his various
16 other companies in what is termed ‘Phillips Holdings,’ including Moxee, Arrow Sales Group,
17 KonnectOne, Stratabites, Panda Mobile, and MVNO Connect.” (Mot. at 6.) Plintron argues that
18 these requests are relevant “to understanding the extent to which Mr. Phillips improperly used
19 Plintron USA employees for Defendant entities’ work, used Plintron USA funds to compensate
20 Defendant entities’ employees, and benefited from Plintron USA employees work for Defendant
21 entities.” (Mot. at 7.) There are two main points of contention related to these requests, which the
22 Court addresses in turn below.

a. **“Phillips Holdings”**

The Parties’ first disagreement the breadth of Plintron’s request for information regarding companies related to or controlled by Phillips. Specifically, Plintron’s requests seek information regarding Phillips’ relationship with “Defendant Entities,” which are broadly defined as:

any entity in the wireless telecommunications industry formed by any Defendant, in whole or in part, directly or indirectly, including Stratabites LLC, MVNO Connect LLC, Arrow Sales Group LLC, KonnectOne LLC, Moxee Technologies LLC, and Panda Mobile LLC, and any of its current parents, subsidiaries, predecessors, successors, affiliated entities, controlled entities, joint ventures, related entities, agents, attorneys, employees, interns, representatives, assigns, directors, or officers and all other Persons acting or purporting to act on its behalf.

(Declaration of Matthew Diggs (Dkt. No. 131), Ex. A at 8.) Phillips objected to that definition as overbroad, and instead identified “only entities in the telecommunications industry in which he has held at least a 5% stake or has served as founder, board member, director, or officer dating back to January 22, 2018,” which includes “MVNO Connect LLC, Arrow Sales Group LLC, KonnectONE, Inc. (previously KonnectONE LLC), Moxee Technologies LLC, and Panda Mobile LLC.” (*Id.*, Ex. D. at 62.) Phillips later added Stratabites LLC to this list. (*Id.*, Ex. F. at 81.) The Court notes that this list of companies aligns with Plintron’s definition of “Phillips Holdings.” With little daylight between the Parties, the Court concludes that Phillips may limit his responses to the requests seeking information regarding either the “Defendant Entities” or “Phillips Holdings” to MVNO Connect LLC, Arrow Sales Group LLC, KonnectONE, Inc. (previously KonnectONE LLC), Moxee Technologies LLC, Panda Mobile LLC, and Stratabites LLC.

b. **Legal Control**

Plintron next argues that Phillips is only willing to “produce documents he possesses in his personal capacity” and “directed Plintron to seek discovery from his companies through Rule 45 Subpoenas. (Songer Decl. ¶ 10.) Phillips claims that he has already produced all of the

documents in his possession, custody, or control. (Opp. at 6 (citing Fed. R. Civ. P. 34.)). Plintron further argues that “by virtue of his ownership and control over the companies,” Phillips should be compelled to produce those documents which are currently in the possession of the Phillips Holdings companies. (Mot. at 6.) Phillips responds that Plintron’s conclusory argument fails to show that he has “legal control” over documents. (Opp. at 6–7 (citing In re Citric Acid Litig., 191 F.3d 1090, 1107 (9th Cir. 1999).) The Court agrees with Phillips. As the party seeking production, it is Plintron’s burden to show that Phillips asserts legal control over the documents. See United States v. Int’l Union of Petroleum & Indus. Workers, AFL-CIO, 870 F.2d 1450, 1452 (9th Cir. 1989). Plintron points to no evidence in the record to show that Phillips possesses such control, *i.e.*, “the legal right to obtain [responsive] documents [from those companies] upon demand.” In re Citric Acid Litig., 191 F.3d at 1107. Therefore, the Motion is GRANTED IN PART as to the documents which Phillips has in his possession and DENIED IN PART as to the documents in the possession of those companies associated with Phillips. Before Phillips is required to produce documents in the possession of those companies related to him, Plintron must first demonstrate that Phillips he exercises “actual control” over the documents at issue.

2. MVNO Connect Documents (Interrogatory Nos. 1-3, 5, 7; Request Nos. 1-5, 15)

Plintron seeks information from Phillips regarding MVNO Connect as “relevant to the claims Phillips developed competing and complementary products and services for MVNO Connect in direct violation of his contractual and fiduciary duties to Plintron USA.” (Mot. at 8.) The Court GRANTS the Motion IN PART as to these requests. To the extent he has not already done so, Phillips must conduct a reasonable search for and produce responsive and non-privileged documents relating to MVNO Connect which are either (1) in Phillips’ possession; (2)

1 shown to be within his legal control. As discussed in Section A of this Order, Plintron may seek
 2 MVNO Connect’s corporate documents directly from MVNO Connect, so long as Plintron takes
 3 reasonable steps to avoid undue burden or expense.

4 **3. Communications, Contracts, and Agreements with Plintron USA Customers**
 5 **(Request Nos. 6-11)**

6 Plintron next seeks information concerning “communications, agreements, and contracts
 7 between Mr. Phillips, and/or Defendant entities and Plintron USA customers,” noting that they
 8 are relevant to “Plintron USA’s ability to fully assess Mr. Phillips solicitation of Plintron USA
 9 customers for KonnectOne, MVNO Connect, or other Phillips Holdings companies’ business
 10 dealings.” (Mot. at 8.) Phillips claims that he has produced documents sufficient to respond to
 11 those requests. (Opp. at 9–10.) The Court GRANTS the motion as to these requests IN PART.
 12 To the extent he has not already done so, Phillips must conduct a reasonable search for and
 13 produce those responsive and non-privileged communications, contracts, and agreements
 14 between Plintron USA Customers and MVNO Connect LLC, Arrow Sales Group LLC,
 15 KonnectONE, Inc. (previously KonnectONE LLC), Moxee Technologies LLC, Panda Mobile
 16 LLC, Stratabites LLC, or Phillips himself which are either (1) in Phillips’ possession; (2) shown
 17 to be within his legal control. See discussion supra Section B.1.b. Plintron may seek the same
 18 corporate information from the corporate entities themselves via Rule 45 subpoenas, so long as
 19 Plintron takes reasonable steps to avoid undue burden or expense.

20 **4. Requests Regarding Tax and Financial Information (Interrogatory Nos 4-5;**
 21 **Request Nos. 13-19)**

22 Plintron seeks an order compelling Phillips to produce a wealth of tax and financial
 23 information, including Phillips’ personal tax returns (See Diggs Decl., Ex. C at 47 (Request No.
 24

1 13),) and corporate tax returns from the companies identified as being associated with Phillips,
2 (Diggs Decl., Ex. C at 48–52 (Request Nos. 14–19).) The Court GRANTS IN PART and
3 DENIES IN PART the Motion as to these requests.

4 First, the Court GRANTS IN PART and DENIES IN PART the motion as it pertains to
5 Phillips’ personal tax returns. Plintron claims that Phillips’ personal tax returns are relevant and
6 necessary to “measure the harms caused to Plintron USA.” (Mot. at 9.) The Court finds this
7 request to be overbroad insofar as it would include a host of Phillips’ personal financial
8 information that is unrelated to Plintron’s alleged harms. Instead, Phillips must conduct a
9 reasonable search for documents sufficient to identify anything of value which he has received
10 from MVNO Connect LLC, Arrow Sales Group LLC, KonnectONE, Inc. (previously
11 KonnectONE LLC), Moxee Technologies LLC, Panda Mobile LLC, and Stratabites LLC.

12 Second, the Court GRANTS IN PART and DENIES IN PART the motion as it pertains
13 to the corporate tax returns from the specified companies. The Court notes that Phillips has
14 already “produced the limited number of corporate tax return documents in his personal
15 possession,” (Opp. at 10), but to the extent any such documents remain in his possession, Phillips
16 must produce them. Plintron may seek additional corporate tax returns through the third party
17 subpoena process, so long as those subpoenas are reasonably tailored to avoid undue burden or
18 expenses on the non-party entities.

19 **C. Rule 37(a)**

20 As per the Court’s February 12, 2025, Order, (Dkt. No. 146), any further discovery
21 motions brought by the Parties in this case must follow the expedited joint motion procedures set
22 forth in Local Civil Rule 37(a).

CONCLUSION

Plintron's Motion to Compel Compliance of Subpoenas is GRANTED IN PART and DENIED IN PART. The Court finds that the relevant timeframe related to the topics and requests included in the subpoenas runs from when the Entities were formally established as corporations through the present. However, the Court also finds that Plintron failed to take "reasonable steps to avoid imposing undue burden" when issuing the subpoenas. Although the Entities have close ties to the named Defendants, they are still considered non-parties to this litigation and are therefore owed the protection of Rule 45. Accordingly, within 14 days of this Order, the Entities must conduct a reasonable search for and produce the following categories of information (as discussed above):

- all non-privileged responsive contracts and communications between MVNO Connect and TruConnect, Assist, Patriot, RedPocket, and Megatel (i.e., the five customers whom Plintron identified as having been misappropriated by Defendants.)
- all non-privileged responsive documents and communications discussing Plintron USA with Dan Thygesen, Michael Porter, Jim Alfonsin and John Galloway (i.e., the named T-Mobile employees.)
- all responsive and non-privileged documents and communications relevant to their relationship and dealings with Mr. Van Arsdale. To the extent that those documents and communications are withheld as attorney work-product or privileged legal advice, the Entities must produce a comprehensive and accurate privilege log which identifies the document and indicates the basis for privilege.

- 1 • all responsive and non-privileged documents sufficient to identify which, if any,
2 employees of Plintron USA were simultaneously employed by the Entities during
3 the relevant period (i.e., any time after the Entities were formally established.)
- 4 • all responsive and non-privileged documents and communications with the
5 Named Defendants regarding MVNA services provided to TruConnect, Assist,
6 Patriot, RedPocket, and Megatel (i.e., the five customers whom Plintron identified
7 as having been misappropriated by Defendants.)
- 8 • all responsive and non-privileged documents and communications related to any
9 accounts, including, but not limited to, Amazon Web Services accounts, email
10 services accounts, and Paychex accounts, which they share or shared with
11 Plintron USA.

12 Similarly, Plintron’s Motion to Compel Phillips is DENIED IN PART and GRANTED
13 IN PART. To the extent he has not already done so, Phillips must produce non-privileged
14 documents responsive to Interrogatory Nos. 1–3, 5, 7; and Request Nos. 1–5, 7–12, 14–19.
15 Phillips must produce responsive documents which are in his possession, including those which
16 seek information regarding MVNO Connect LLC, Arrow Sales Group LLC, KonnectONE, Inc.
17 (previously KonnectONE LLC), Moxee Technologies LLC, Panda Mobile LLC, and Stratabites
18 LLC. However, if those documents are not in his possession, but rather in the possession of one
19 of those related companies, Plintron must first demonstrate that Phillips exercises “actual
20 control” over those documents before requiring their production.

21 Finally, any further discovery motions brought by the Parties in this case must follow the
22 expedited joint motion procedures set forth in Local Civil Rule 37(a).
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1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated: April 9, 2025

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4 Marsha J. Pechman
5 United States Senior District Judge
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